



COMMUNITY DEVELOPMENT DEPARTMENT

17555 Peak Avenue Morgan Hill CA 95037 (408) 779-7247 Fax (408) 779-7236
Website Address: www.morgan-hill.ca.gov

PLANNING COMMISSION MEETING MINUTES

REGULAR MEETING

MAY 24, 2005

PRESENT: Benich, Escobar, Koepp-Baker, Lyle, Mueller, Weston

ABSENT: None

LATE: Acevedo, who arrived and was seated with the Commissioners at 7:02 p.m.

STAFF: Community Development Director (CDD) Molloy Previsich, Planning Manager (PM) Rowe, and Minutes Clerk Johnson

Chair Weston called the meeting to order at 7:00 p.m., by leading the flag salute.

DECLARATION OF POSTING OF AGENDA

Minutes Clerk Johnson certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

OPPORTUNITY FOR PUBLIC COMMENT

Chair Weston opened the opportunity for public comment.

Determining that none were present in the audience to address matters not appearing on the agenda for the evening, Chair Weston closed the time for public comment.

MINUTES

MAY 10, 2005

COMMISSIONERS MUELLER/BENICH MOTIONED TO APPROVE THE MAY 10, 2005 MINUTES, WITH THE FOLLOWING MODIFICATIONS:

Page 6, paragraph 7 line 1: Vice Chair Lyle asked the ~~question of this specific project for this year's competition?~~ *whether this project would apply for this year's competition?*

THE MOTION CARRIED WITH THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ESCOBAR, KOEPP-BAKER, LYLE, MUELLER; NOES: NONE; ABSTAIN: WESTON; ABSENT: NONE.

Noting that the consent calendar was to be considered at this time, Commissioner Lyle asked that item 2 be pulled; Commissioner Mueller asked that item 3 be pulled.

PLANNING COMMISSION MEETING MINUTES

May 24, 2005

PAGE 2

CONSENT CALENDAR:

**1)DAA-98-11:
SPRING-
MALONE/SPEER** A request to amend the development agreement for Spring Manor Development located on the south side of Spring Ave. The requested amendment is for a one-year extension of time for a custom lot. The subject site is located at 16630 Eagle Island Ct. in the R-1 12,000/RPD zoning district.

COMMISSIONERS MUELLER/ESCOBAR MOTIONED APPROVAL OF THE CONSENT CALENDAR (ITEM 1 ONLY) AS PRESENTED: RESOLUTION NO. 05-24, RECOMMENDING APPROVAL, TOGETHER WITH THE FINDINGS AND CONDITIONS CONTAINED THEREIN, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION, DAA-98-11: SPRING-MALONE/SPEER, TO ALLOW FOR A ONE-YEAR EXTENSION OF TIME FOR A SINGLE CUSTOM LOT BUILDING ALLOTMENT RECEIVED IN THE 1998-99 RDCS COMPETITION. THE MOTION PASSED WITH THE UNANIMOUS AFFIRMATIVE VOTE OF ALL COMMISSIONERS PRESENT; NONE WERE ABSENT.

**2) DAA 03-15:
E. CENTRAL-
WARMINGTON
HOMES** A request to amend the development agreement for the Morgan Lane subdivision located on the south side of E. Central and north of E. Main Ave. in the R-1 7,000/RPD zoning district. The proposed request is for a six month extension of time for the 12 building allocations granted for FY 2005-06.

Commissioner Lyle explained that he had asked for review of this item based on concerns in Exhibit B: the fact that the applicant appears to need an extension of time to ‘pull’ the permits for the 14 units for FY 04/05. Commissioner Lyle noted that the ability to ‘pull’ is expiring June 30, 2005 even though the *under construction* date is December 30, 2006. “Perhaps the applicant is really asking to change only the current December 30, 2004 pull date to June 30, 2005 or a little later. I cannot see a reason to change the FY 04/05 or 05/06 units ‘commence construction’ dates listed. The schedule, as presented, looks odd. I can’t recall any other schedule having 12 months between permit-pulling and commencement of construction,” Commissioner Lyle stated.

Noting the concern of the December 30, 2005 time line, PM Rowe advised that the applicant has pulled permits and commenced with site preparation, having had the grading permit issued. PM Rowe said staff has no reason to think the time lines might not be met, as the plan checks have been completed.

Discussion following the potential ramifications if the extension of time was granted (it would require City Council action). PM Rowe stated it would be unreasonable not to issue the permits. The Commissioners discussed the possibility of tabling the matter.

Chair Weston opened the public hearing.

Donna Vingo, 3160 Crow Canyon Place, San Ramon, indicated she works with Warmington Homes. Ms. Vingo told the Commissioners that the soil investigation issue which had been of concern – and which had held up the project – have been completed and now the developer was just waiting for recording of the map, which had been

PLANNING COMMISSION MEETING MINUTES

May 24, 2005

PAGE 3

approved April 6, 2005. Ms. Vingo said the developer had just received word that the map had been recorded following approval by Public Works, as she told Commissioners, "Everything is ready to go."

Commissioner Lyle expressed continued concern that the developer could indeed meet the schedule, "It sounds 'iffy'."

PM Rowe advised that if the map can be recorded quickly, permits could be pulled by June 30, 2005.

Ms. Vingo assured the Commissioners that the developer was ready to go; "We're just waiting for the map to be recorded for a final 'go ahead' from Public Works and the Building Department."

Commissioner Lyle reminded that June 30 is just four weeks away. Ms. Vingo said she is confident – as is the developer – and both are 'ready to go'. In response to discussion of the recording, Ms. Vingo said that is anticipated to be fully completed the first week of June.

With no others present indicating a wish to discuss the matter, the public hearing was closed.

Noting the confidence of the representative of the developer relating to the time frame, yet expressing hesitation because of the 'closeness' of those times, **COMMISSIONER MUELLER MOTIONED TO TABLE THE ITEM TO A DATE UNCERTAIN. COMMISSIONER ESCOBAR SECONDED THE MOTION WHICH PASSED BY THE FOLLOWING VOTE: THE MOTION CARRIED WITH THE FOLLOWING VOTE: AYES: ACEVEDO, ESCOBAR, KOEPP-BAKER, LYLE, MUELLER, WESTON; NOES: BENICH; ABSTAIN: NONE; ABSENT: NONE.**

Commissioner Acevedo was excused at 7:11 p.m. for the next agenda item due to the potential for conflict of interest, as he lives nearby the subject property.

**3) DAA 04-04:
HILL RD.-GERA**

A request to amend the development agreement for a nine lot single family development located on the west side of Hill Rd. between Jean Ct. and Pear Dr. in the RE 40,000/RPD zoning district. The proposed amendment is for a one year extension of time for the 6 building allocations granted for FY 2005-06.

Commissioner Mueller informed that he had asked to have this item heard separately because the applicant had taken over the on-going project and needed to become familiar with the processes which could be anticipated. "The time line may be quick and everything could eventually be pushed into the second year, so I'm asking if the applicant feels he needs more flexibility and to Staff what they can do to help in this circumstance of tragedy," Commissioner Mueller said.

Chair Weston opened the public hearing.

Nick Gera, 100 S. Murphy Ave., #102, introduced himself to the Commissioners as the newly appointed applicant, having taking over the project in tragic circumstances. Mr. Gera stated he would appreciate the longest extension possible. "We don't know the

PLANNING COMMISSION MEETING MINUTES

May 24, 2005

PAGE 4

situation presently, but we will start working on the development as soon as possible,”

Mr. Gera affirmed. Mr. Gera said having the ability to complete the project in two phases would be advantageous.

Commissioner Mueller told the Commissioners he was comfortable with giving an 18 month extension, rather than the one-year suggested by staff. Commissioner Mueller said he was certainly willing to continue to the second phase, indicating thinking that due to the circumstances of family and probably the need for some additional time for trying to bank this kind of development where sales prices will exceed \$1,000,000. “Even in today’s world, the developer may need to be cautious and a year may not be enough time to accomplish the project. We are trying to take some of the burden off the family due to the current situation,” Commissioner Mueller said.

Discussion followed, with the Commissioners agreeing to change the following dates on Exhibit “B”: Extending deadlines for building permit submittal: April 30, 2006 & April 30, 2006; Obtaining the building permits: June 30, 2006 & March 31, 2007; *and* Commencement of construction: September 30, 2006 & June 30, 2007

These changes would provide the applicant with the ability to construct the nine units over two phases with an 18-month extension rather than 12 months.

As there were no others present to address the matter, the public hearing was closed.

COMMISSIONER MUELLER OFFERED RESOLUTION NO. 05-30, INCLUSIVE OF THE FINDINGS AND CONDITIONS CONTAINED WITHIN, AND WITH THE DATE CHANGES AGREED UPON DURING DISCUSSION, RECOMMENDING APPROVAL TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION DAA-04-04:HILL-GERA, TO ALLOW FOR AN FIFTEEN MONTH EXTENSION OF TIME FOR SIX BUILDING ALLOTMENTS RECEIVED IN THE 2004-2005 RDCS COMPETITION. COMMISSIONER ESCOBAR SECONDED THE MOTION.

Chair Weston reiterated the 2004-05 allocations of six units would have permits pulled by June 30, 2006.

THE MOTION CARRIED WITH THE FOLLOWING VOTE: AYES: BENICH, ESCOBAR, KOEPP-BAKER, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: ACEVEDO.

Commissioner Acevedo returned at 7:20 p.m. to join his fellow Commissioners.

NEW BUSINESS:

**4) SD-05-02/
DA-05-02:
COCHRANE-
LUPINE**

A request for approval of a development agreement and the subdivision of a 16.83-acre portion of a 61-acre site for the construction of 36 dwelling units. The 36 units represent the final three phases of an overall 92-unit single-family development. The project site is located at the northeast corner of Cochrane Rd and Peet Rd in an R-1(12,000)/RPD Zoning District.

PLANNING COMMISSION MEETING MINUTES

May 24, 2005

PAGE 5

PM Rowe gave the staff report and called attention to correspondence received from the

Santa Clara Water District during the review period in which concern was raised that some of the District's operations that are located adjacent to the back of the residences. The District, PM Rowe said, suggested placement of a buffer zone; the developer and staff looked at the location to address the matter. Consequently, the developer will create a sound wall along the perimeter at that location and enhance (lessened) noise impact competency within the homes as well. [see page 22, Standard Conditions, #2 and delete page 22 23, #18]

PM Rowe continued the staff report and clarified that on Jan 11, 2005, this project was determined to have met the commitments of median and low income units which had to equal 13% of the total units. In discussions with the developer regarding the matter, PM Rowe said, it was ascertained that if 13% proved short for the numbers required, the developer would have to add an additional unit, but in this case only three median income units were involved and because of the number of low income, the discrepancy between the percentage previously noted in the scoring was reduced and no further adjustment was needed.

Commissioner Lyle called attention to Exhibit B by saying if the permits need to be pulled by August 15, 2006, it would seem that the Commence Construction dates could easily be moved up to no later than March 31, 2007. PM Rowe advised that commencing construction 10 1/2 months after pulling the permits, as recommended, would be the norm.

Commissioner Mueller called attention to the proposed Resolution No. 05-26, asking if there are new requirements for CC&Rs to be modified. PM Rowe responded the issue had been brought to staff's attention and was being looked into.

The following modifications to the Standard Conditions within Resolution No. 05-26 were noted:

(2nd) Page 22 23

Page 23: 18 deleted

19 renumbered to become 18

Commissioner Acevedo recommended inclusion of a condition regarding the proximity of the Boy's Ranch, noting he had brought the matter to the attention of the Commissioners at the last meeting. Other Commissioners agreed and it was so ordered to be added as a new #19 on page 23 of the Standard Conditions.

Chair Weston opened the public hearing.

Richard Oliver, 275 Saratoga Ave., #105, Santa Clara, spoke to the Commissioners as the applicant, asking whether conditions being met in prior agreements needed to be included in this agreement? [No; no changes] As to the CC&Rs, Mr. Oliver said he did not believe any changes were necessary and recalled with the Commissioners that disclosure regarding the Boy's Ranch had been part of his standard operating procedures during past practice.

Mr. Oliver called attention to Pages 12-13 of the Standard Conditions, item XIV C, and

PLANNING COMMISSION MEETING MINUTES

May 24, 2005

PAGE 6

asking insertion of the phrase, *If required* be inserted on the second sentence of this condition. Mr. Oliver noted that this issue was cross-referenced on page 9, Standard

Conditions with item XI, D; as a result, item D was deleted.

Consideration of various construction items was discussed with the Commissioners regarding pages 8- 9 of the Development Agreement for Resolution No. 05-27, with agreement for a requirement that first floor openings only need to be enlarged..

Looking at Exhibit B, Mr. Oliver stated he thought it would be possible to pull permits for the units by March 31, 2007.

With the applicant, Commissioners Mueller/Lyle clarified matters pertaining to the CC&Rs on page 6 of the Development Agreement.

Mr. Oliver stated that regarding the Santa Clara Water District pumping plant, workers in the area had told him they never heard noise from the plan following corrections after initial start up. He also noted that occasionally there might be a limited amount of noise when District personnel dumped rocks in a holding area, but that was infrequent.

With no others present to address the matter, the public hearing was closed.

The Commissioners returned to the matter of the storm drain for further discussion, with Chair Weston reiterating the applicant's argument: the storm drain didn't have to be hooked up and PM Rowe advising there is not on-site retention.

Commissioner Lyle said that in Exhibit B, permits were required to be obtained in August of several years a change to 10 1/2 months was noted. "This seems silly to have that time line," Commissioner Lyle said, and suggested revisiting the matter. It was pointed out that the applicant had not objected to the time recommended.

COMMISSIONER MUELLER OFFERED RESOLUTION NO. 05-26, APPROVING A 40-LOT SUBDIVISION (36 RESIDENTIAL LOTS, PLUS 4 OPEN SPACE AND SCHOOL SITE LOTS), REPRESENTING PHASES 3B, 4 AND 5 OF AN OVERALL 92-UNIT SINGLE-FAMILY PROJECT LOCATED AT THE NORTHEAST CORNER OF COCHRANE ROAD AND PEET ROAD IN AN R-1 (12,000)/RPD ZONING DISTRICT, WITH THE FOLLOWING MODIFICATIONS:

STANDARD CONDITIONS

Page 12 15c (insert) *If required*

Page 9 11d delete

Page 223 (standard conditions) delete 18; renumber 19 to 18

Add 19 (page 23) Requiring notification of the proximity of the Boy's Ranch

COMMISSIONER ESCOBAR, NOTING THE FINDINGS AND CONDITIONS CONTAINED WITHIN THE RESOLUTION, SECONDED THE MOTION, WHICH PASSED WITH THE UNANIMOUS AFFIRMATIVE VOTE OF ALL COMMISSIONERS PRESENT; NONE WERE ABSENT.

COMMISSIONER MUELLER OFFERED RESOLUTION NO. 05-27,

RECOMMENDING APPROVAL OF DEVELOPMENT AGREEMENT APPLICATION DA-05-02: COCHRANE – LUPINE FOR APPLICATION MC-04-25: COCHRANE – LUPINE, INCLUDING THE FINDINGS AND CONDITIONS CONTAINED THEREIN, AND WITH THE FOLLOWING AMENDMENT:

DEVELOPMENT AGREEMENT

Page 8 First floor openings *only* need to be enlarged

COMMISSIONER ESCOBAR OFFERED THE SECOND TO THE MOTION, WHICH CARRIED BY UNANIMOUS AFFIRMATIVE VOTE OF ALL COMMISSIONERS PRESENT; NONE WERE ABSENT.

**5) ZAA-01-20:
TENNANT-
SAFEWAY**

A request to amend the precise development plan for the Tennant Station Shopping Center located on the south east corner of the intersection of Monterey Rd. and Tennant Ave. in the Planned Unit Development zoning district. The proposed amendment request is to allow the existing theater to increase in size from 23,009 sq. ft. to 31,595 sq. ft.

PM Rowe presented the staff report, clarifying that the actual number of seats under this proposal has declined, with fewer, wider, and swivel seats forming the basis of a renovation which will yield 1380 seats, down 47 seats from the previous number. Based on those numbers, PM Rowe advised, staff has concluded that fewer parking spaces would be need and believe that there is sufficient parking available at the present time. Calling attention to the staff report, PM Rowe indicated the table which had been distributed to the Commissioners reflected the seats/parking spaces ratio, but did not include the area by Rosso's Furniture store. PM Rowe explained that staff looked at the number of seats and felt the theater had 'parking space credit' because of the reduced number of seats; furthermore, staff felt this side of the lot is vastly under parked versus the western side. PM Rowe said staff also took this opportunity to look at where the theater is being expanded, as part of the requirement for approval sends the project to the ARB because of the landscaping.

Commissioner Mueller asked questions regarding the plans for a walkway on the eastern side of the building. PM Rowe explained that when patrons exit from the building, it would be anticipated that the walkway would be convenient. Commissioner Mueller continued by asking if the sidewalk could be other than at the curb – specifically, if there would be enough space for a semi-detached sidewalk.

Chair Weston commented it was probably designed as an emergency exit. PM Rowe concurred with that notion.

Commissioner Mueller expressed concern of the applicant putting in a 'standard sidewalk', with a curb adjacent, saying, "It would be nice to preserve some landscaping."

Commissioner Lyle commented that it appears from the staff report that parking for all the businesses is 'short 212 spaces now'. He also pointed out that, "Another methodology for figuring the parking spaces needed - based on seating - would indicate the need for an additional 48 spaces."

Chair Weston opened the public hearing.

PLANNING COMMISSION MEETING MINUTES

May 24, 2005

PAGE 8

Paul Gunsky, 2998 S. Bascom, San Jose, told the Commissioners he is President of Cinelux Theaters, having taken on this project in 2003 with a desire to have an exceptional theater. Mr. Gunsky explained that with the addition of 418 seats, the net loss of seats in the total theater to be a reduction from 1383 to 1289, or 93 from the original layout, due to having wider seats, 42 inches back to back and platform seating, as well as having installed several handicapped seating areas. Mr. Gunsky detailed the history of the theater and gave as the reason for the request the need to add additional screens in order to show as many films as possible. He explained that the cinema distributors want local agents to hold the films at least 4 – 5 weeks for the revenue stream. Mr. Gunsky said the additional screens will create the same amount of traffic, but provide more variety of films than now presented. Mr. Gunsky indicated the distributors are presenting more stringent contracts. Mr. Gunsky emphasized that the numbers of cars that will be able to come in will not increase the number of people in the seats. Regarding the concerns of the walkway, Mr. Gunsky said that the walkway in the back will be a maximum of four feet, similar to what exists now on the location.

Chair Weston asked the speaker if, as owner/operator of the theater, but not the building, what degree of authority he would have over the construction? Mr. Gunsky said he had agreement with the development owner.

Commissioner Benich requested clarification as to “How many parking spaces will there be; where are we really? Mr. Gunsky and PM Rowe made reference to the table which had been distributed, and explaining the numbers projected for the particular theaters which are proposed for renovation.

Commissioner Acevedo joined the discussion, saying the three phase expansion would result in approximately 8586 +/- sq. ft. total.

Mike LaBarbera, 1765 Lucas Place, San Jose, told the Commissioners he owns the shopping center and the related parking. Mr. LaBarbera said the proposed parking is actually what is there now. “We’ll get rid of 24 - 25 spaces where the expansion will go,” Mr. LaBarbera said. “It seems unfair to combine methods of parking for the theater and various retail establishments.” Mr. LaBarbera continued, “When we redeveloped Tennant Station, there was almost net 0 in building and net 0 for parking, and now with the movie theater expansion, the net number of seats has gone down, so if the parking is off, it has been off for 20 years, all along it’s been status quo, and nothing has changed.”

Commissioner Koepp-Baker asked Mr. LaBarbera the status of the old bowling alley. Mr. LaBarbera responded that he was going to say: ‘We’re hoping for a new bowling alley. We’ve had some trouble in the negotiations, but the lease is out for signature now.’ He indicated that because there would be no difference in use, there would be no net change in the parking needs.

Chair Weston led discussion regarding the 24-hour Nautilus operation which contributes to congestion during certain hours. Mr. LaBarbera responded that parking for the facility was originally approved, and it isn’t possible to move parking around. Chair Weston asked if it would be possible to dedicate certain parking spaces to certain facilities?

Mr. LaBarbera explained why it would not be feasible to limit parking, as drivers would ‘just move to the next area (Safeway) possibly impacting that business with a domino effect. Discussion ensued with Chair Weston determining that Safeway owns a portion of

PLANNING COMMISSION MEETING MINUTES

May 24, 2005

PAGE 9

the parking lot (at the front of their store). Mr. LaBarbera explained that limiting parking during specific hours or definitely prohibiting parking is difficult for enforcement – and possible negative business impact.

Commissioner Mueller said the matter of limiting parking near the theater is probably not an issue, as Safeway gets some business due to the overflow.

Mr. LaBarbera said it's a 'catch 22': if there is no parking, retail owners complain there is no business; if the businesses are doing well, they complain there is no parking.

Discussion ensued regarding other locations within Tennant Station, with Mr. LaBarbera explaining all the sites have been built.

Commissioner Lyle asked what happens, once the theater renovation is done and the bowling alley is in operation, as well other retail services, what recourse would be available if parking problems become terrible? Mr. LaBarbera responded that if the parking lot becomes full, the matter generally takes care of itself with drives seeking spaces further from the front door. "As a property owner, I don't monitor the parking. The market force takes care of itself; people (customers) will take care of it."

Commissioner Mueller said the matter becomes a City issue when it becomes a public safety issue.

Chair Weston asked about the Concord Circle area parking in back, to which Mr. LaBarbera responded that it is frequently filled. Mr. LaBarbera also told the Commissioners that he has not received complaints of parking in the center or at Safeway.

PM Rowe remarked that if one looks at the market mix, actually based on the furniture store and office/retail operations, there has been a net reduction through gains in parking.

Chair Weston led discussion of theater regarding 'normal night use'. It was argued that peak times for the theater are opposite peak times for others, as well as co-entertainments: if people go bowling they may then to the movies, too. PM Rowe stated that, "Historically there has been an imbalance between parking available and empty spaces during certain times of the day.

Commissioner Lyle asked how many spaces are close to the theater? [1,096 overall]

Commissioner Mueller reminded there was a requirement for directional signs in Tennant Center with the 'redo' of Safeway and asked the status of obligation. Mr. LaBarbera explained he was not knowledgeable of the matter, but assured he will look into it.

Ron Sotelo, 13245 Watsonville Rd., told Commissioners he is the manager of the theater and has been in theater management since 1986. Mr. Sotelo said there has not been an issue with parking since the business is generally evenings and weekends. Mr. Sotelo said the fitness center business is down at that time.

Robert Reinhardt spoke to the Commissioners, saying he is the parent of two younger teenagers and as a cop by trade. "There is not much entertainment in this town and I

PLANNING COMMISSION MEETING MINUTES

May 24, 2005

PAGE 10

wonder why we're sitting here with this albatross. I would rather spend my dollars in this City here where I live. And as a cop I will say you can't tell people where to park," Mr. Reinhardt said. He continued by using Santana Row as an example for increasing tax revenue. Mr. Reinhardt said that when people are coming and spending their money here instead of San Jose, you've done your job as Planning Commissioners."

Discussion between the Commissioners and the speaker continued in the areas of:

- the loss of a) 30 theater seats and b) 25 parking spots
- not having empty parking spots
- desirability of parking (or not) further away from the intended destination
- importance of teaching children safety
- need for increased tax revenue

Mr. Gunsky returned to the podium to speak on the theater prior to the planned remodel and telling the Commissioners that the parking numbers related by staff are accounted for in the ratio of reduction. Mr. Gunsky said the 24-hour fitness center had less attendance on Saturday and Sunday, but appeared to be busy mid week. Mr. Gunsky also said that when Safeway had the grand reopening parking was limited due to the renovation and customers were parking by Rosso's with no complaints.

With no others in attendance indicating a desire to speak to the matter, the public hearing was closed.

The Commissioners discussed:

- total parking spots proposed for the theater
- relocation of handicapped van accessible parking
- parking spaces available
- location of parking (distances/amounts)

Commissioner Benich offered his opinion on the continuing issues with Safeway's promises in relation to the remodel and renovation completed at that site.

Commissioner Acevedo and PM Rowe stressed this is a different applicant and it would be difficult to link the Safeway project issues to this one.

Chair Weston informed he had just finished project of his own, wherein he installed directional signs at a cost of about \$40 each, and remarking he found it 'interesting' that as a corporation who made the promises and commitments, Safeway had not done so.

PM Rowe responded to a question from Commissioner Mueller regarding the landscaping buffer.

Commissioner Acevedo said he goes to the theater 'all the time'. "I know there are parking problems, but it is our responsibility to look at potential congestion and try to help solve it. I hope the bowling alley opens. The 24-hour Nautilus business and the clothing store are busy. The old theater had a number of seats that are now being used and we have the opportunity for more. My point is: this is a very congested area. I'm not sure of how to solve the parking issue. To get to the theater the parking lot is not pedestrian friendly. Perhaps some other solutions could be made available when the bowling alley goes in," Commissioner Acevedo said. "I would approve the request as

PLANNING COMMISSION MEETING MINUTES

May 24, 2005

PAGE 11

presented, but I wonder about creative ideas for future solutions, such as maybe a parking structure.”

Commissioner Lyle said the applicants have done ‘a wonderful job on the movie theaters’ and wished them further success. “I understand the arguments being made are not analogous to 1986. Parking is a problem and I don’t know any recourse. The situation is made worse with Safeway being there now,” Commissioner Lyle declared. He expressed concern about people parking by the gas station to get to the theater then saying, “So I don’t want to approve the request as presented.

Commissioner Acevedo stated he would vote for the proposal, and then reiterated a wish for future consideration of other solutions.

Chair Weston commented, “The City’s downtown will be experiencing a parking problem which will not be addressed until there is an outcry; but there will not be an outcry until the businesses are too successful. It may have to be put on the business owners to mitigate parking problems.”

Commissioner Mueller said, “My ‘take on this’ is that there will be a net loss something like 2% of the parking, but there is a huge potential benefit for the City. We need more things for kids and if there are more theater screens that will help. A loss of 25 parking spaces isn’t causing a problem and 25 more spaces won’t cure a problem. We may be short some parking spaces, but for sure it is unbalanced now. The applicant is asking for the ability to increase business – and that will be good for the City.” He added that he thought there would be a ‘net plus for the City’. We will have to watch the parking show support to not make it worse.

Commissioner Escobar indicated concurrence with Commissioner Mueller’s statements, adding, “If we want to consider something creative, in relation to the parking lot, the idea of a tram might be feasible. It could be put into place easily and would not be ‘hugely expensive’.”

Mr. LaBarbera said the investors in the bowling alley had suggested the possibility of a tram in the discussions.

Chair Weston said perhaps the approval could have condition of a managed pedestrian ticket taking for the theater by stationing a designated person or indicating a specific area for ticket purchases.

COMMISSIONER MUELLER OFFERED RESOLUTION NO. 05-28, INCLUDING THE FINDINGS AND CONDITIONS CONTAINED THEREIN, RECOMMENDING APPROVAL OF AN AMENDMENT TO THE PRECISE DEVELOPMENT PLAN APPROVED UNDER ORDINANCE NO. 1546, FOR THE TENANT STATION SHOPPING CENTER LOCATED IN THE SOUTHEAST QUADRANT OF THE INTERSECTION OF MONTEREY RD. AND TENANT AVE., WITH THE FOLLOWING AMENDMENTS:

Section 5, A detached sidewalk, not adjacent to the building, shall be installed along Vineyard Blvd.....

(add) Section 5, condition 3: The handicapped van accessible space shall be replaced.

COMMISSIONER ESCOBAR SECONDED THE MOTION, WHICH PASSED BY THE FOLLOWING VOTE: THE MOTION CARRIED WITH THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ESCOBAR, KOEPP-BAKER MUELLER, WESTON; NOES: LYLE; ABSTAIN: NONE; ABSENT: NONE.

**6) UPA-87-13:
MONTEREY-
WEST**

A request to amend the Conditional Use Permit to expand storage of boats and recreational vehicles and clarify hours for parts sales and repair may occur on a 2.71-acre site located at 19500 Monterey Rd. in the CS (Service Commercial) zoning district.

PM Rowe gave the staff report. He gave an overview of the background of the project and addressed the requirement of conditional visual screening (landscape preferred) and the front parking area expansion with the need for configuration to Municipal code. PM Rowe advised that as a condition of the 1987 approval, the Use Permit required landscaping to Code.

Commissioner Acevedo inquired about the building to be removed or relocated and the use in the original plan, which he referred to as a school, but now in use as a repair shop. Other Commissioners and staff stated the old building was gone, having been removed to accommodate widening of the road when Sobratto High School was constructed.

PM Rowe advised that the two parcels are under consideration of a proposal to eliminate the lot line and merge the two parcels.

Chair Weston asked if the area on the east side of the property is continuing to be used for storage of boats? [It appears so]

Chair Weston opened the public hearing.

Barton Hechtman, 848 The Alameda, San Jose, told the Commissioners he has been working this project for a year. Mr. Hechtman related the following to the Commissioners:

- there are roofing conditions the owner just became aware of
- because of Sobrato High a 'slice' of Burnett St. was taken off the property and a building demolished and another building moved because of circulation issues, so it became necessary to seek an amendment to the use permit
- the goal of condemnation action is to make a person 'whole'; however when the owner began trying to fix the property, there were fees for 'everybody', and the dollars have gotten eaten up so the owner is experiencing a net loss
- when planning a new design, there was a meeting which included personnel from the School District, Building, Planning, and the City Attorney's office.
- Planning asked what the owner wanted; the owner said "school you caused the problems, so it would be right to set conditions, and others pay
- the owner settled an agreement with the School, which appeared to have a condition that the owner could go back to the school for new dollars, but that has not occurred
- any new costs – and there have been many – have been borne by the applicant

Mr. Hechtman directed attention to six conditions he wished to have the Commissioners consider for revision:

Standard Conditions

Page 9 IX A of 10

PLANNING COMMISSION MEETING MINUTES

May 24, 2005

PAGE 13

Page 9 XI A: ...building permits....; Mr. Hetchman said there is not mention of geology issues connected with the property and geotechnical engineering reports are not inexpensive; the owner plans on taking the area and scraping base rock, then putting a modular building on the site.

Page 9, XI B (following the word permits in the first sentence, add): *if required by the Building Department after review of the plans*

Chair Weston asked who will be completing the off-site improvements? Mr. Hetchman responded the School District had them done. Chair Weston indicated that the owner could argue the use in that geology report.

PM Rowe advised that staff does not object to the wording suggested.

Mr. Hetchman continued, saying that Page 10, item E, was discussed at the meeting referenced and there are no plans for building. PM Rowe clarified that this is the same qualifying language listed at the end of the other conditions and this approval doesn't supersede prior conditions.

Mr. Hetchman agreed that the revised and renumbered page 21, XXIII, item B, dealt with landscape screening. Mr. Hetchman described the requirement as 'fine on Burnett', but said he didn't think the matter should have to go to the ARB, asking that the 'ARB sentence be deleted'.

As to Monterey Road, Mr. Hetchman said there had been no discussion during the meeting about fencing on Monterey. He detailed the fencing for the Commissioners, saying it was behind the parking stalls and was a wrought iron fence such as had been installed prior to the request. Mr. Hetchman said the problem was paramount because fencing at that location had not been discussed and it would be very difficult to landscape. Mr. Hetchman described the materials there now: base rock which had been rolled and pressed with no irrigation lines. "Please delete the Monterey Road reference and accept the fencing as it is. We would like an alternative and ask for relief in this way," Mr. Hetchman said.

Page 21 XXIII D (front parking lot) Mr. Hetchman said the landscaped strip is exactly the same as in the 1987 permit, claiming he didn't know how it could now be non-conforming and that the owner did not have the ability to ask the School District about it. "If you cannot remove the Condition, we want more time, and feel there may not be understanding of the costs of bringing this area into conformity," Mr. Hetchman said as he asked for three years (36 months) for compliance.

Chair Weston asked PM Rowe if the Planning Department would have the ability to provide Administrative approval on Monterey instead of ARB? PM Rowe responded, "Yes. The owner could be billed for only time and materials cost in that case."

Commissioner Mueller asked if the lot on the east side was originally used for storage? Mr. Hetchman replied it had been used for storage of used boats and also storage of new materials.

Commissioner Mueller noted that it seems the fence at Burnett is brick and said if the owner is planning on expanding the storage area, why should it be new information that

PLANNING COMMISSION MEETING MINUTES

May 24, 2005

PAGE 14

an opaque fence would be required? Mr. Hetchman said if the current conversation had been had nine months ago, he would have asked the School for the fencing. Mr. Hetchman explained that the current cross-hatched picket fence does screen, and suggested a condition for a screen-like material to be attached to the wrought iron.

With no others present indicating a wish to speak to the matter, the public hearing was closed.

PM Rowe suggested the Commissioners focus first on items B and D (XXIII Other Conditions) on page 21.

Commissioners discussed mitigation of landscaping on the Monterey Road side of the property.

Commissioner Mueller reminded that the Commissioners have used a like Condition with other projects which have not experienced dislocation, but expansion. He said the fencing on Monterey needs a lot of work and expressed the thinking that it would not be right to have the applicant ask for something that won't be given to others. Commissioner Mueller continued by relating his concern about how long it takes landscaping to become mature and recommended asking ARB to require rapid growing landscaping at the location.

Chair Weston agreed, saying he would request landscaping on Monterey.

Commissioner Benich told the other Commissioners he agreed with the applicant. "I don't think we should require them to dig up the landscape," he stated as he talked about the benefits of a boat business with Lake Anderson being nearby. Commissioner Benich suggested the Commissioners could remove the second sentence of XXIII B.

COMMISSIONER MUELLER OFFERED RESOLUTION NO. 05-29, INCLUSIVE OF THE CONDITIONS AND REQUIRED FINDINGS, APPROVING A REQUEST TO AMEND THE CONDITIONAL USE PERMIT TO EXPAND STORAGE OF BOATS AND RECREATIONAL VEHICLES, RELOCATE AN EXISTING STRUCTURE, AND CLARIFY HOURS THAT PART SALES AND REPAIR MAY OCCUR ON A 2.71 ACRE SITE LOCATED AT 19500 MONTEREY ROAD IN THE CS (COMMERCIAL) ZONING DISTRICT, TOGETHER WITH THE FOLLOWING AMENDMENTS:

Modifications to Page 9 IX A ~~or~~ of

Page 9 XI A: ...building permits....;

Page 9, XI B (following the word permits in the first sentence, add: *if required by the Building Department after review of the plans*

Page 10, XII, 10E, If required by Chief Building Official, permits for

Page 10, XII, 10E to be revised by staff

COMMISSIONER ESCOBAR SECONDED THE MOTION.

Commissioner Lyle asked about condition XXIII D: what is involved, how expensive would it be? PM Rowe responded the original sales area had been expanded, but without a permit. "We will look at the original site plan for 1987 to see what changes have been made, and what will be required to bring it back to Code."

PLANNING COMMISSION MEETING MINUTES

May 24, 2005

PAGE 15

Chair Weston commented it probably would require \$60,000 to \$120,000 to reconfigure.

Commissioner Lyle said in that case, 36 months might be reasonable so the expenditures could be spread out. Commissioner Lyle indicated he would be agreeable to change from 12 months to 36, as the project will be expensive, and the may want to sell the property.

Chair Weston agreed.

Discussion ensued as to the occupancy of the building. PM Rowe advised he did not think it was occupied at present.

Commissioner Mueller suggested conditioning item XXIII D to read: 12 months or until the building is occupied, which would provide 12 months for completion. The owner stated from the audience that the restaurant is still open.

Mr. Hechtman informed that the restaurant does not occupy the whole building and others (potential tenants) are looking to occupy other parts of the building.

Chair Weston proposed that there would be some argument that if the building were to meet the payments, a tenant would be needed on the lease.

Commissioner Escobar suggested the matter be brought back in 12 months for examination.

COMMISSIONER MUELLER AMENDED THE MOTION TO READ 24 MONTHS; COMMISSIONER ESCOBAR AS MAKER OF THE SECOND TO THE MOTION, AGREED TO THE AMENDMENT.

Further discussion ensued regarding the potential for lease and construction at the time of the signing of a lease.

The motion passed with the affirmative vote of all commissioners present; none were absent.

OTHER BUSINESS:

**7) RD
SUBCOMMITTEE
RECOMMENDATIONS**

PM Rowe reported that the recommendations were more than 95% complete and that the subcommittee had been meeting weekly. PM Rowe gave a detailed list of the Commissioners, Building industry personnel, the Engineer, and architect who comprised the subcommittee. He advised there was also a representative of the Downtown Association and informed that the subcommittee would be meeting again the morning following the current meeting.

PM Rowe provided a summary of the major changes recommended by the subcommittee.

Chair Weston stepped down at 9:37 p.m. due to a conflict of interest, as he plans to submit a vertical mixed use project in the downtown area. As he was leaving the dais, Chair Weston presented a letter he had written expressing his thoughts as a private citizen to the matter.

Vice Chair Lyle assumed the authority of the gavel at 9:38 p.m.

PLANNING COMMISSION MEETING MINUTES

May 24, 2005

PAGE 16

PM Rowe explained the procedure for discussion and preparation for the upcoming joint meeting.

The Commissioners discussed the following items:

- need to have acronyms identified
- some issues focus on the downtown area; others address problems discovered during last competition
- pleasure at having public art added to the criteria
- questions about Housing Needs and the recommendation for the minimum passing score [rationale based on vertical mixed-use being exempted from BMRs]
- the fact that when the subcommittee looked at available parcels, some are very small, and trying to have all elements in other projects, it becomes difficult to include all categories
- density
- moderate unit costs
- deed restrictions
- need for 'real' competition downtown
- being fair to the developers
- going back to residential areas which would be pedestrian friendly, yet not overly generous on points
- lot layout and orientation
- parks and pathways
- livable communities and the need to support the concept by constructing covered bus shelters [VTA must agree]
- equestrian trails downtown [only way: linear park downtown]
- small shared public areas for open space consideration

Commissioner Escobar remarked that the downtown is much different from the rest of the City – and that the buildup there is vastly different from what the City leaders is trying to do in the rest of the City. “There needs to be serious consideration of that,” he said. Discussion followed of possible creative ideas for Open Space, such as roofs used for common areas or shared space within a development. Commissioner Escobar commented that it will be essential to think creatively to provide open space. Commissioner Mueller said there is need to work on generating open space downtown somewhere along Third Street, and stressed the importance of giving a ‘sense of place where people go and gather’.

At this point, CDD Molloy Previsich joined the discussion to coordinate the workshop of the City Council and the Planning Commission. CDD Molloy Previsich said the June 1 agenda of the City Council contains discussion for setting the date of the workshop/joint meeting. CDD Molloy Previsich suggested Monday, June 6 as the first date available.

Vice-Chair Lyle said it needed to be done quickly, as with the time constraints, the City has ‘it’s back against the wall’. PM Rowe agreed there is need to ‘work quickly’.

CDD Molloy Previsich said she would attempt to arrange the date as suggested.

Discussion followed regarding the letter Chair Weston had given to the Commissioners, with the Commissioners saying they would peruse the letter individually.

PLANNING COMMISSION MEETING MINUTES

May 24, 2005

PAGE 17

Other issues were discussed briefly and included:

- Public Facilities (item F of the subcommittee recommendations): the question was posed if there was a desire to link this directly to the Downtown Plan [Commissioner Mueller said, "Yes, the developers need to comply with the Downtown Plan."
- public art and entertainment
- the need for Public Works to look differently at the downtown for different entry statements [Public Works scoring was addressed briefly]
- fees for the downtown area

Commissioner Mueller commented on a long-ago discussion, wherein a developer(s) of high-density projects would be contracted to look at the Downtown Plan.

Vice-Chair Lyle noted that the Commissioners by general consensus, had agreed to the workshop/joint meeting with the City Council on June 6, and asked staff to complete the details.

ANNOUNCEMENTS: PM Rowe reported that the City Council at their last meeting approved the RDSCS Quarterly Report as sent forward by the Commissioners.

The Council members also extended the terms of the existing Commission, pending action on interviews by the full Council on June 8, 2005. It appears, PM Rowe announced, that Commissioners Acevedo and Benich will participate in those interviews.

The Council members thanked the Planning Commissioners for their work on the Zoning Amendment and the Development Agreement for the Glenrock/Capriano project, as they approved both through unanimous action.

ADJOURNMENT: Vice-Chair Lyle adjourned the meeting of the Commission at 10:09 p.m., having ascertained there was no further business to be conducted for the evening.

MINUTES RECORDED AND PREPARED BY:

JUDI H. JOHNSON, Minutes Clerk